

APPEAL NO. 111684  
FILED JANUARY 12, 2012

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 4, 2011. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) reached maximum medical improvement (MMI) on March 4, 2011, with a 60% impairment rating (IR). The appellant (self-insured) appeals the hearing officer's determination of the MMI date and the IR. The appeal file does not contain a response from the claimant. We note that the hearing officer incorrectly identified the self-insured's attorney at the CCH in his decision and order. A review of the record reflects that [(Mr. R)] represented the self-insured at both the CCH and on appeal.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury on (date of injury), and that (Dr. S) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as the designated doctor to examine the claimant for MMI and IR. The claimant testified that he sustained an injury to his left upper extremity (UE). The hearing officer's determination that the claimant's MMI date is March 4, 2011, is supported by sufficient evidence and is affirmed.

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

The designated doctor initially examined the claimant on June 23, 2009, and found the claimant to be at MMI with a 0% IR for the diagnosis of left wrist sprain. In evidence was a Benefit Dispute Agreement (DWC-24) dated July 19, 2010, which reflects the parties agreement that the compensable injury of (date of injury), extends to complex regional pain syndrome (CRPS) also known as reflex sympathetic dystrophy (RSD). Dr. S re-examined the claimant on March 22, 2011. The narrative from Dr. S

dated March 22, 2011, did not include range of motion (ROM) measurements of the left UE but rather Dr. S stated that the claimant reported he is unable to perform any movement of his left arm as it would severely exacerbate his pain. There is no indication in his narrative that Dr. S attempted to rate sensory or motor deficit. Dr. S then assigned 100% impairment of the UE and converted that impairment to whole person to assess the 60% IR. Dr. S stated that he felt the 60% IR is extremely high given the lack of objective findings but felt the only other option was to assign a 0% impairment due to lack of objective findings.

The Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides) in Section 3.1k on page 3/56 of the AMA Guides is entitled “Causalgia and [RSD]” and provides as follows:

### **Causalgia and [RSD]**

Causalgia is a term that describes the constant and intense burning pain usually seen with [RSD] when the causative lesion involves injury to a nerve.

The term “major causalgia” designates an extremely serious form of RSD produced by an injury to a major mixed nerve, usually in the proximal portion of the extremity. The term “minor causalgia” designates a more common form of RSD produced by an injury to the distal part of the extremity involving a purely sensory branch of a nerve.

Other forms of RSD not associated with injury of a peripheral nerve include minor traumatic dystrophy, shoulder-hand syndrome, and major traumatic dystrophy.

The four cardinal signs and symptoms of RSD are pain, swelling, stiffness, and discoloration. The diagnosis of RSD may be supported with a three-phase nucleotide flow study, cold stress testing, recurrence of pain after previously successful stellate ganglion blocks, in which case Horner’s syndrome must be present, or Bier blocks.

The impairment secondary to causalgia and RSD is derived as follows:

1. Rate the [UE] impairment due to loss of motion of each joint involved (Sections 3.1f through 3.1j).
2. Rate the sensory deficit or pain impairment according to instructions in this section and Table 11a (p. 48).

3. Rate the motor deficit impairment of the injured peripheral nerve, if it applies (Table 12a, p. 49).
4. The appropriate impairment percents for loss of motion, pain or sensory deficits, and motor deficits if present are *combined* using the Combined Values Chart (p. 322) to determine the [UE] impairment. Major causalgia may result in a complete loss of function and an impairment of the extremity as great as 100%.

Dr. S did not attempt to rate the claimant's CRPS in the manner outlined in the AMA Guides. Therefore, the hearing officer erred in determining that the claimant's IR is 60%.

The only other certification in evidence is from (Dr. A), a carrier selected post-designated doctor required medical examination doctor. Dr. A examined the claimant in May of 2011, and certified that the claimant reached clinical MMI on June 23, 2009, with a 0% IR. The only diagnosis listed in Dr. A's narrative is UE pain. Dr. A stated that ROM measurements and motor deficit impairment should be discounted since it is examinee dependent and is not accompanied by edema, trophic changes, true ankylosis, or thermal changes. Dr. A does not consider CRPS in assessing the claimant's impairment, therefore he did not rate the entire compensable injury. Further, as previously noted the MMI date of March 4, 2011, has been affirmed. Therefore, Dr. A's certification cannot be adopted.

We therefore remand the issue of IR to the hearing officer. The designated doctor in this case is Dr. S. The hearing officer is to determine whether Dr. S is still qualified and available to be the designated doctor, and if so, request that Dr. S rate the compensable injury in accordance with the rating criteria in the AMA Guides based on the claimant's condition as of the date of MMI, March 4, 2011. The hearing officer is to provide the designated doctor's response to the parties and allow the parties an opportunity to respond and then make a determination regarding the IR. If Dr. S is no longer qualified and available to serve as the designated doctor then another designated doctor is to be appointed to determine the claimant's IR.

We affirm the hearing officer's determination that the claimant reached MMI on March 4, 2011. We reverse the hearing officer's determination that the claimant's IR is 60% and remand the issue of IR to the hearing officer for further action consistent with this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision

must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**JONATHAN BOW, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
300 W. 15TH STREET  
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR  
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For service by mail the address is:

**JONATHAN BOW, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
P.O. BOX 13777  
AUSTIN, TEXAS 78711-3777.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Cynthia A. Brown  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge